

ATTACHMENT TO HIGHWAY WORK PERMIT – CONSULTANT INSPECTION AGREEMENT

This is an attachment to Highway Work Permit No. _____ issued to _____ (Permittee) pursuant to Section 52 of the Highway Law for work on State Highway right-of-way. This attachment, the application submitted by the Permittee, and all plans and other documents submitted as part of the application or subsequently approved by the New York State Department of Transportation (NYSDOT) are a part of and are incorporated into the Permit described above. The Permittee agrees to the following conditions, requirements, and obligations which are in addition to, not in lieu of, any requirements contained in Title 17 of the New York Code of Rules and Regulations (NYCRR), Parts 125-130 and/or any requirements stated in the application submitted by the Permittee.

1. All work on State Highway right-of-way shall be according to plans and specifications entitled _____, prepared by _____ and dated _____, which plans and specifications were approved by NYSDOT on _____, and are attached to and are made part of this permit as Schedule A (Plans). No modifications will be made to the Plans without the express written permission of NYSDOT.

It is understood that alterations to the plans may be necessary to meet unforeseen field conditions or to provide for inadvertent errors or omissions. These alterations will be made by the Permittee, with the approval of and to the satisfaction of NYSDOT. The intent of this requirement is not to alter the scope of the work as approved by NYSDOT, but to provide flexibility to make alterations, additions, and subtractions necessary to complete the work within the original intent and scope of the Plans.

2. Permittee agrees that, in addition to any protection afforded to NYSDOT under any available insurance, NYSDOT shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations; whether undertaken by Permittee's own forces or by contractor or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State of New York, NYSDOT and all employees or officers of the State and their agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any claim, including but not limited to claims for personal injuries, property damage or wrongful death and/or environmental claims, in any way associated with the Permittee's activities or operations, no matter how caused.

3. All authority granted by this Permit relates solely to that authority within the discretion of the Commissioner of Transportation. All other permits and approvals required for the project shall be the responsibility of the Permittee. There shall be no liability or obligation placed upon NYSDOT with respect to such other requirements.

4. This Permit shall not be construed as conveying to the Permittee or to any other person, the right to enter upon or trespass upon the lands of parties not party to this agreement for any purpose, nor shall this Permit be construed as authorizing the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to this agreement.

5. In the event that Permittee fails to comply with the terms of the Permit, NYSDOT has the right to cancel this approval at any time. NYSDOT may decide to continue, rescind, or modify this Permit in such a manner as it finds just and equitable.

6. The Permittee shall retain, at its own cost, the services of a reputable engineering firm ("Consultant"), to inspect and monitor the work performed under the Permit. The Consultant shall monitor the work of the Permittee and the Permittee's Contractors to ensure that the work performed under the permit is done in accordance with the plans, the Standard Specifications, and all other requirements of the permit. As necessary, the Consultant will inform, orally and in writing, the Permittee and NYSDOT of deficiencies in workmanship, material quality, Work Zone Traffic Control, Safety, etc. Failure of the Permittee to properly respond to a notice of deficiency shall be deemed a breach of the Permit and shall be grounds for denial of NYSDOT's approval of the entire work or portions of the work under the permit. Inspection of the work by the Consultant shall not relieve the Permittee of responsibility for compliance with all of the conditions of the permit.

The engineering firm (Consultant) and its inspector(s) retained by the Permittee shall be approved in writing by NYSDOT prior to the start of the work. The firm shall be registered to practice professional engineering in New York State, and experienced in inspection of highway, structural, utility, and traffic signal work, in accordance with the scope of the work to be performed under the permit. The primary inspector shall be certified at NICET Level II or above, or the equivalent.

No work shall be performed under this permit before the Consultant and its inspector(s) have been approved by NYSDOT, and has assigned sufficient staff to the project to carry out the necessary project duties as described below. If NYSDOT determines that the personnel assigned to this work are insufficient, the Permittee shall promptly make arrangements to provide sufficient personnel. If the Permittee fails to make such arrangements within a reasonable time, NYSDOT may order the project shut down until sufficient personnel are provided. NYSDOT shall have the right to approve or reject the individual employees to be assigned to inspection of the work authorized by the Permit before their employment on the project.

7. The services to be performed by the Consultant shall include but shall not be limited to the following:

A. Construction inspection in accordance with the standard practices of NYSDOT. The Consultant is to certify that each item of work conforms to the Plans.

B. Maintenance of records in accordance with the current NYSDOT Manual of Uniform Record Keeping on Highway Contracts. For more information, refer to <https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information>

ATTACHMENT TO HIGHWAY WORK PERMIT – CONSULTANT INSPECTION AGREEMENT – Page 2

C. Obtaining all necessary material samples and conducting all necessary material tests in accordance with NYSDOT's Materials methods. If NYSDOT determines that plant inspections for hot mix asphalt and portland cement concrete will be required, the Permittee shall make arrangements with a testing laboratory approved by NYSDOT to perform such inspections according to NYSDOT's Standards. The Permittee will be responsible for all costs associated with obtaining and testing of samples.

D. Preparation of all drawings, sketches, and plans necessary for changes to meet actual field conditions.

E. Providing three sets of Record (As-Built) Plans upon completion of the work.

F. Reviewing and inspecting compliance with all aspects of the Work Zone Traffic Control provisions of the Plans, the Permit, MUTCD and NYSDOT Standard Specifications and notifying NYSDOT of any noncompliance issues.

G. The Consultant shall notify NYSDOT, Permittee and Contractor of a circumstance or condition of the work observed by and known to the Consultant per required training to be a violation of a Federal, State or local law, ordinance or regulation. The Consultant shall inform NYSDOT of any violations in the performance of the work on this permit which are not immediately corrected. In the event the Consultant recognizes a Contractor's oversight or a Contractor's disregard of project safety requirements which poses an immediate risk of serious personal injury and/or property damage, the Consultant shall have the authority to immediately issue a Stop-Work Order, and then the Consultant shall promptly notify NYSDOT and the Permittee of such order. Notification and/or issuance of a Stop-Work Order by the Consultant shall not relieve the Contractor from sole responsibility for job site safety and compliance with all applicable Federal, State or local laws, ordinances and regulations.

NYSDOT reserves the right to inspect the work, but is under no obligation to perform such inspections and assumes no responsibility for lack of any compliance on the part of the Contractor. If NYSDOT determines that there are serious or persistent violations of applicable Federal, State or local laws, ordinances and regulations in the work of this Permit, NYSDOT may issue a Stop-Work Order and all Permit work will cease immediately. In addition, the Permit may be revoked if the safety issues are not resolved to NYSDOT's satisfaction.

The Consultant is responsible for monitoring the Contractor's efforts to maintain traffic and protect the public from damage to person or property in accordance with plans and specifications, within the limits of, and for the duration of, the permit work.

8. The Permittee shall reimburse the State for all reasonable Permit engineering review costs, and for any NYSDOT completed inspections which may be necessary due to negligence on the part of the Permittee, its Contractors, or the Consultant. These costs shall include, but not be limited to, salaries and fringe benefits for NYSDOT staff performing inspections, and for material inspectors, travel costs, etc. All work performed by the Permittee shall be at no cost to the State. If costs are incurred by NYSDOT, NYSDOT will bill the Permittee monthly, and the Permittee agrees to pay all such bills within 30 calendar days of the billing date. Failure to pay such bills promptly shall be deemed a breach of the Permit.

9. Prior to the intended commencement of work, the Permittee shall develop a schedule from the contractors' work programs for the accomplishment of all work authorized by the Permit and shall submit this schedule to the Consultant and NYSDOT for informational purposes. The Permittee shall promptly notify the Consultant and NYSDOT of any changes to the schedule.

10. The Permittee shall designate in writing to NYSDOT the Contractor's on-site person who will be responsible for all construction activities covered by this Permit, and shall immediately notify the Consultant and NYSDOT in writing if there is any change of the person so designated. The Permittee shall also designate one or more persons as emergency contacts and shall establish an emergency telephone list. This list shall be kept current by the Permittee and shall be provided to the Consultant, to NYSDOT, and to local public safety agencies.

11. Prior to the commencement of work the Permittee shall arrange a pre-construction meeting with NYSDOT staff, the Consultant, the Permittee, and the Permittee's contractors. The purpose of this meeting is to ensure that there is a clear understanding, especially on the part of the Contractors and Consultant, of the requirements imposed by the terms and conditions of the Permit. The Permittee shall notify the Regional Permit Engineer a minimum of 10 days prior to the meeting date.

Consultant Authorized Signature *

Permittee Signature

Title

Title

Consulting Firm

Corporation

*Consultant authorized signature must be by person who can legally commit the consulting firm to the requirements of this agreement.